

Kevin Laukaitis\*  
Jonathan Shub (SBN 237708)  
**SHUB LAW FIRM LLC**  
134 Kings Highway E, 2nd Floor  
Haddonfield, NJ 08033  
T: 856-772-7200  
F: 856-210-9088  
[klaukaitis@shublawayers.com](mailto:klaukaitis@shublawayers.com)  
[jshub@shublawayers.com](mailto:jshub@shublawayers.com)

*Attorneys for Plaintiffs and the Class*

[Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

CINDY BECHTEL, TIFFANY HANKIS,  
and NANCY SCHLENKER individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

WALMART INC.,

Defendant.

Case No.: 3:22-cv-430

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs, Cindy Bechtel, Tiffany Hankis, and Nancy Schlenker (“**Plaintiffs**”), on behalf of themselves and all others similarly situated, bring this class action against Defendant, Walmart Inc., (“**Defendant**” or “**Walmart**”), and allege on personal knowledge, investigation of their counsel, and information and belief as follows:

**INTRODUCTION**

1. Defendant, Walmart, offers a variety of over-the-counter products including transdermal patches as well as pain relief and skin care products. Defendant’s over-the-counter lidocaine products include a range of external pain-relieving patches and creams for pain associated with or caused by ailments such as arthritis, backache, muscle strains, sprains, and bruises.

2. Particularly, Defendant sells, markets, and distributes “Equate” Maximum Strength Lidocaine Pain Relieving Patch (the “**Patch**”) and “Equate” Maximum Strength Pain Relief Cream (the “**Cream**”) (collectively, the “**Products**”).

3. Nearly every individual suffers muscle aches and pains and seeks relief for this common problem.

1           4.     When consumers purchase pain-relieving products the strength of the  
2 dose is an important purchasing consideration. In fact, consumers willingly pay a  
3 premium for pain-reliving products that have strong doses.<sup>1</sup>  
4

5           5.     Defendant takes advantage of this consumer preference for strong  
6 doses and/or maximum strength by prominently representing this message on the  
7 one place that every consumer looks when purchasing these products – the  
8 packaging and labels. Defendant touts its representation right on the front of its  
9 Products’ labels that the Products are “Maximum Strength” lidocaine products.  
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11           6.     Consumers including Plaintiffs lack the scientific knowledge  
12 necessary to determine whether the Products are truly “Maximum Strength”  
13 lidocaine products or even to ascertain the true nature, quality, or strength of the  
14 Products. As such, reasonable consumers must and do rely on manufacturers, like  
15 Defendant, to be transparent and properly disclose on the packaging all material  
16 information regarding the Products, which includes the Products dose and strength.  
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19           7.     However, Defendant makes this “Maximum Strength” representation  
20 in a knowingly false and deceptive manner because Defendant’s Products contain  
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23 <sup>1</sup> Defendant’s competitors sell 4% lidocaine pain reliving patches for approximately \$0.86 per  
24 patch while Defendant sells the ‘maximum strength’ 4% lidocaine patches sell for \$1.16 per  
25 patch. *See* <https://www.walmart.com/ip/Equate-Maximum-Strength-Lidocaine-Pain-Relieving-Patches-6-Count/121592299> (for Defendant’s ‘maximum strength’ version) and  
26 <https://www.walgreens.com/store/c/walgreens-lidocaine-patches/ID=300394242-product> (for the  
27 competitor pricing version). Plaintiff only uses the pricing in the previous paragraph as an  
28 example to plausibly plead that Defendant does indeed charge a large premium for its Product.  
The specific premium on a granular level will be determined later in the case by an expert.

1 only 4% lidocaine. This is misleading because for “Patch” products, similar  
2 prescription patches manufactured by at least one of Defendant’s competitors  
3 contain 5% lidocaine and for “cream” products, similar creams manufactured by at  
4 least one of Defendant’s competitors contain 5% lidocaine and are also available  
5 over-the-counter (“OTC”).<sup>2</sup>

7 8. Indeed, Defendant has not only misrepresented that its Products are  
8 “Maximum Strength” lidocaine products, but it has also omitted from the Products’  
9 labeling that there are other prescription products available in the market that  
10 contain a higher percentage of lidocaine (*i.e.* 5%).  
11

12 9. Defendant sells and distributes the Products employing a marketing  
13 and advertising campaign centered around claims that appeal to consumers who  
14 Defendant knows seek out strong and/or “maximum strength” doses of lidocaine  
15 to relieve their back pain and aches. As such, reasonable consumers, like Plaintiffs,  
16 reasonably believe that they are purchasing a maximum strength Lidocaine  
17 product( *i.e.* the highest dosage they can buy).  
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24 <sup>2</sup> Regarding lidocaine cream products, at least one of Defendant’s competitors offers a  
25 prescription lidocaine cream with a 5% concentration. *See*  
26 [https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=88ca9cba-0c4a-482f-b502-](https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=88ca9cba-0c4a-482f-b502-ceefdb1bfcd&type=display)  
27 [ceefdb1bfcd&type=display](https://www.drugsdepot.com/store.php/drugsdepot/pd9612367/lidocaine-5-ointment-3544-gm-by-fougera-amp-co), *see also*  
[https://www.drugsdepot.com/store.php/drugsdepot/pd9612367/lidocaine-5-ointment-3544-gm-](https://www.drugsdepot.com/store.php/drugsdepot/pd9612367/lidocaine-5-ointment-3544-gm-by-fougera-amp-co)  
by-fougera-amp-co (last accessed January 21, 2022).

1           10. Defendant's prominent and systematic mislabeling of the Products  
2 constitute a pattern of unlawful and unfair business practices that deceive and harm  
3 consumers and the public.

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5           11. Accordingly, Plaintiffs bring this suit on behalf of themselves and  
6 similarly situated consumers who purchased Defendant's Products. Plaintiffs and  
7 Class Members were damaged because they would not have purchased (or would  
8 not have paid a premium) for Defendant's Products had they known the true facts  
9 regarding the Products' "Maximum Strength" representations and omissions.

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11           12. For all the reasons set forth herein, including but not limited to  
12 Defendant's misrepresentations and omissions regarding "Maximum Strength",  
13 Plaintiffs seek relief in this action individually, and as a class action on behalf of  
14 similarly situated purchasers of Defendant's Products for: (i) violation of  
15 California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*  
16 ("FAL"); (ii) violation of California's Unfair Competition Law, Cal. Bus. & Prof.  
17 Code §§ 17200 *et seq.* ("UCL"); (iii) violation of California's Consumers Legal  
18 Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"); (iv) violation of Illinois  
19 Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. §§  
20 505, *et seq.* ("ICFA"); (v) violation of Illinois Uniform Deceptive Trade Practices  
21 Act, ILCS §§ 510/2, *et seq.* ("ILCS"); (vi) common law fraud; (vii) breach of  
22 express warranties; and (viii) unjust enrichment.  
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**THE PARTIES**

13. Plaintiff Cindy Bechtel is a resident and citizen of California residing in Dublin, California. She purchased Equate Maximum Strength Lidocaine Pain Relieving Patches and Equate Max Strength Lidocaine Pain Relief Cream on numerous occasions during all applicable statute of limitations periods at Walmart retail locations in California, including in Pleasanton.

14. Plaintiff Tiffany Hankis is a resident and citizen of Illinois residing in Normal, Illinois. She purchased Equate Maximum Strength Lidocaine Pain Relieving Patches on numerous occasions during 2021 at a Walmart retail location in Normal, Illinois.

15. Plaintiff Nancy Schlenker is a resident and citizen of Illinois residing in Belleville, Illinois. She purchased Equate Maximum Strength Pain Relief Lidocaine Roll-On Cream and Equate Maximum Strength Lidocaine Pain Relief Cream on numerous occasions during all applicable periods. Most recently, Plaintiff Schlenker purchased the Equate Maximum Strength Pain Relief Lidocaine Roll-On Cream via Walmart's mobile app and also from the Walmart retail location in Granite City, Illinois.

16. Defendant Walmart is an Arkansas corporation, with its principal place of business and headquarters located at 702 S.W. 8<sup>th</sup> St. Bentonville, Arkansas 72716. Defendant is a resident and citizen of Arkansas. Defendant Walmart markets,

1 distributes, and sells Equate Maximum Strength Lidocaine Pain Relieving Patch and  
2 Equate Maximum Strength Pain Relief Cream. Defendant Walmart markets,  
3 distributes and sells the aforementioned Products to consumers throughout the  
4 United States through their retail locations and online through their website.  
5

6 17. Plaintiffs reserve the right to amend this Complaint to add different or  
7 additional defendants, including without limitation any officer, director, employee,  
8 supplier, or distributor of Defendant who has knowingly and willfully aided,  
9 abetted, or conspired in the false and deceptive conduct alleged herein.  
10

### 11 **JURISDICTION AND VENUE**

12

13 16. This Court has personal jurisdiction over Defendant in this matter.  
14 The acts and omissions giving rise to this action occurred in the state of California.  
15 Defendant has been afforded due process because it has, at all times relevant to this  
16 matter, individually or through its agents, subsidiaries, officers and/or  
17 representatives, operated, conducted, engaged in and carried on a business venture  
18 in this state and/or maintained an office or agency in this state, and/or marketed,  
19 advertised, distributed and/or sold products, committed a statutory violation within  
20 this state related to the allegations made herein, and caused injuries to Plaintiffs and  
21 putative Class Members, which arose out of the acts and omissions that occurred in  
22 the state of California, during the relevant time period, at which time Defendant  
23 was engaged in business activities in the state of California.  
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1           17.     This Court has subject matter jurisdiction over this matter pursuant to  
2 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100  
3 or more putative Class Members, (ii) the aggregate amount in controversy exceeds  
4 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity  
5 because at least one Plaintiff and Defendant are citizens of different states. This  
6 Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28  
7 U.S.C. § 1367.  
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10           18.     Pursuant to 28 U.S.C. § 1391(a), venue is proper because a substantial  
11 part of the events giving rise to the claims asserted occurred in this District. Venue  
12 is also proper pursuant to 28 U.S.C. § 1391(c) in this District because Defendant  
13 conducts substantial business here, has sufficient minimum contacts, and otherwise  
14 purposely avails itself of the markets through the promotion, sale, and marketing of  
15 the Products directly in this District.  
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18                   **FACTS COMMON TO ALL CLASS MEMBERS**  
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20           20.     Lidocaine is the active ingredient in Defendant's Products and forms  
21 the basis for Defendant's "Maximum Strength" misrepresentations on the  
22 Products' front labeling and its overall advertising and marketing campaign.  
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1 21. “Lidocaine belongs to the family of medicines called local  
2 anesthetics. This medicine prevents pain by blocking the signals at the nerve  
3 endings in the skin.”<sup>3</sup>  
4

5 22. Lidocaine is commonly used in products such as Defendant’s  
6 Products to help with body soreness and pain.

7 23. At all relevant times, Defendant has marketed its Products in a  
8 consistent and uniform manner nationwide. Defendant sells the Products in all 50  
9 states in their retail stores and through their online store.  
10

11 24. Aware of the consumer preference for strong and/or maximum  
12 strength doses of lidocaine, Defendant specifically advertises its Products as  
13 “Maximum Strength” lidocaine products.  
14

15 25. One attribute that consumers specifically value when purchasing any  
16 pain-relieving product is the strength of the dose.<sup>4</sup>  
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22 <sup>3</sup>[https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-  
route/description/drg-20072776](https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-route/description/drg-20072776) (last accessed January 24, 2022).

23 <sup>4</sup> Strength of dose is so important that nearly every manufacturer of common pain-relieving  
24 products emphasize it. See [https://www.tylenol.com/products/tylenol-extra-strength-  
caplets?utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=GO-USA-ENG-PS-Tylenol-  
BC-EX-RN-Brand-  
Core+EST&utm\\_content=Core&utm\\_term=extra+tylenol&gclid=Cj0KCQjwi7yCBhDJARIsAMWFSCTqYK8J3go53nS0bag4R7EVHQZ7ogd\\_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw\\_wcB&gclsrc=aw.ds&](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCQjwi7yCBhDJARIsAMWFSCTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&) (Tylenol extra strength); see also  
27 <https://www.bayeraspirin.com/products/bayer-extra-strength-aspirin> (extra strength aspirin).  
28

26. Aware of this consumer preference, Defendant specifically advertises its Products as “MAXIMUM STRENGTH” Lidocaine patches. Below is an image of the Equate Maximum Strength Lidocaine Pain Relieving Patch front label<sup>5</sup>:



<sup>5</sup> The labels shown in the complaint represents the labeling present, upon information and belief, of each product at the time of filing and that Plaintiff and the proposed classes read and relied on. <https://www.walmart.com/ip/Equate-Maximum-Strength-Lidocaine-Pain-Relieving-Patches-6-Count/121592299> (Equate Maximum Strength Lidocaine Pain Relieving Patch); (last accessed January 24, 2022).

27. Below is an image of the Equate Maximum Strength Pain Relief Cream<sup>6</sup>:



28. As shown above, the “MAXIMUM STRENGTH” representation is located on the very center of the front label of the Products in bold lettering surrounded by a bubble that contrasts with the background of the packaging, which instantly catches the eye of all reasonable consumers, including Plaintiffs and Class Members.

29. Defendant, however, is well aware that its Products are not “maximum strength” or maximum strength lidocaine products and deceives

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<sup>6</sup> The labels shown in the complaint represents the labeling present, upon information and belief, of each product at the time of filing and that Plaintiff and the proposed classes read and relied on. <https://www.walmart.com/ip/Equate-Max-Strength-Lidocaine-Pain-Relief-Cream-2-5-fl-oz/253155134?athbdg=L1600> (Equate Maximum Strength Pain Relief Cream); (last accessed January 24, 2022).

1 trusting reasonable consumers like Plaintiffs to believe that they are in fact  
2 purchasing such Products while omitting from the Products' labeling the fact that  
3 there are other prescription products available in the market that contain a higher  
4 percentage of lidocaine (i.e. 5%).  
5

6 30. Indeed, Defendant's over the counter Products contain only 4%  
7 lidocaine while competing prescription lidocaine products contain 5% lidocaine.<sup>7</sup>  
8

9 31. So, consumers can obtain a stronger dose comparable lidocaine  
10 product that is available in the market.

11 32. As such, Defendant's Products are not "Maximum Strength"  
12 lidocaine products as advertised.  
13

14 33. But rather than accurately advertise its Products through its labeling,  
15 Defendant preys on consumers' desire for maximum pain relief to drive substantial  
16 profits.  
17

18 34. All reasonable consumers, including Plaintiffs, read and relied on  
19 Walmart's "Maximum Strength" representations when purchasing the Products.  
20

21 35. Defendant's "Maximum Strength" representation was material to  
22 Plaintiffs' and Class Members' decision to purchase the Products.  
23

24  
25 <sup>7</sup> "This article discusses lidocaine 5% patch products available by your doctor's prescription.  
26 While there are similar over-the-counter (OTC) varieties available, those contain a lower  
27 percentage of lidocaine." See  
<https://www.spineuniverse.com/treatments/medication/prescription-lidoderm-patches-may-help-relieve-back-pain> (last accessed January 24, 2022)

1           36. Defendant’s marketing efforts are made in order to – and do in fact –  
2 induce consumers to purchase the Products at a premium because consumers  
3 believe they are getting lidocaine products that are “Maximum Strength.”  
4

5           37. As shown throughout this Complaint, however, Defendant’s Products  
6 are *not* “Maximum Strength” lidocaine products. Defendant’s representations and  
7 omissions, therefore, are false and misleading.  
8

9           38. Defendant intended for Plaintiffs and Class Members to be deceived  
10 or mislead by its misrepresentations and omissions.

11           39. Defendant’s deceptive and misleading practices proximately caused  
12 harm to Plaintiffs and the Class.  
13

14           40. Plaintiffs and Class Members would not have purchased the Products  
15 or would have not paid as much for the Products, had they known the truth about  
16 the mislabeled and falsely advertised Products.  
17

18                           **PLAINTIFFS’ FACTUAL ALLEGATIONS**

19           **PLAINTIFF BECHTEL**  
20

21           41. Plaintiff, Cindy Bechtel, purchased the Products in the past year from  
22 a Walmart retail store in Pleasanton, California for approximately \$7.00 for the  
23 Patch and \$5.00 for the Cream. Before purchasing the Products, Plaintiff Bechtel  
24 reviewed information about the Products on the Products’ labels and the fact that  
25 the Products were being sold for personal use, and not resale. At the time of  
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1 purchasing her Products, Plaintiff Bechtel also reviewed the accompanying  
2 disclosures, warranties, and marketing materials, and understood them as  
3 representations and warranties by Walmart, specifically the “Maximum Strength”  
4 representations. Plaintiff Bechtel relied on these representations and warranties in  
5 deciding to purchase Walmart’s Products. Accordingly, these representations and  
6 warranties were part of the basis of the bargain, in that she would not have  
7 purchased the Products had she known these representations were not true. Here,  
8 Plaintiff did not receive the benefit of her bargain because Walmart’s Lidocaine  
9 “Maximum Strength” representations are false.

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13 42. As a result of Walmart’s concealment, “Maximum Strength”  
14 representations and omissions, Plaintiff Bechtel purchased the Products. Had  
15 Plaintiff known the true nature of the Products, she would not have purchased the  
16 Products or would have been willing to purchase them for less.

#### 17 **PLAINTIFF HANKIS**

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19 43. Plaintiff, Tiffany Hankis, purchased the Patches multiple times in the  
20 2021 from a Walmart brick and mortar store in Normal, Illinois for approximately  
21 \$7.00 for the Patch. Before purchasing the Product, Plaintiff Hankis reviewed  
22 information about the Product on the Product’s label and the fact that the Product  
23 was being sold for personal use, and not resale. At the time of purchasing her  
24 Product, Plaintiff Hankis also reviewed the accompanying disclosures, warranties,  
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1 and marketing materials, and understood them as representations and warranties  
2 by Walmart, specifically the “Maximum Strength” representations. Plaintiff  
3 Hankis relied on these representations and warranties in deciding to purchase  
4 Walmart’s Product. Accordingly, these representations and warranties were part of  
5 the basis of the bargain, in that she would not have purchased the Product had she  
6 known these representations were not true. Here, Plaintiff did not receive the  
7 benefit of her bargain because Walmart’s “Maximum Strength” representations are  
8 false.  
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11 44. As a result of Walmart’s concealment, “Maximum Strength”  
12 representations and omissions, Plaintiff Hankis purchased the Products. Had  
13 Plaintiff known the true nature of the Products, she would not have purchased the  
14 Products or would have been willing to purchase them for less.  
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#### 16 **PLAINTIFF SCHLENKER**

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18 45. Plaintiff, Nancy Schlenker, purchased the Products numerous times  
19 since 2020 via the Walmart app and from a Walmart retail store in Granite City,  
20 Illinois for approximately \$5.00 for the Cream. Before purchasing the Product,  
21 Plaintiff Schlenker reviewed information about the Product on the Product’s labels  
22 and the fact that the Product was being sold for personal use, and not resale. At the  
23 time she purchased each Product, Plaintiff Schlenker also reviewed the  
24 accompanying disclosures, warranties, and marketing materials, and understood  
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1 them as representations and warranties by Walmart, specifically the “Maximum  
2 Strength” representations. Plaintiff Schlenker relied on these representations and  
3 warranties in deciding to purchase Walmart’s Product. Accordingly, these  
4 representations and warranties were part of the basis of the bargain, in that she  
5 would not have purchased the Products had she known these representations were  
6 not true. Here, Plaintiff did not receive the benefit of her bargain because  
7 Walmart’s “Maximum Strength” representations are false.  
8  
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10 46. As a result of Walmart’s concealment, “Maximum Strength”  
11 representations and omissions, Plaintiff Schlenker purchased the Product. Had  
12 Plaintiff known the true nature of the Products, she would not have purchased the  
13 Products or would have been willing to purchase them for less.  
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#### 15 **FED. R. CIV. P. 9(b) ALLEGATIONS**

16

17 47. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n  
18 alleging fraud or mistake, a party must state with particularity the circumstances  
19 constituting fraud or mistake.” To the extent necessary, as detailed in the  
20 paragraphs above and below, Plaintiffs have satisfied the requirements of Rule 9(b)  
21 by establishing the following elements with sufficient particularity.  
22

23 48. **WHO:** Defendant, Walmart Inc., made material misrepresentations  
24 and/or omissions of fact in its labeling and marketing of the Products by  
25 representing that the Products are “Maximum Strength” lidocaine products.  
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1           49.   **WHAT:** Defendant's conduct here was and continues to be fraudulent  
2 because it has the effect of deceiving consumers into believing that the Products  
3 are "Maximum Strength" lidocaine products. Defendant omitted from Plaintiffs  
4 and Class Members that the Products are not "Maximum Strength" lidocaine  
5 products because other lidocaine products exist in the market that contain a higher  
6 amount (i.e. 5%) of lidocaine. Defendant knew or should have known this  
7 information is material to all reasonable consumers and impacts consumers'  
8 purchasing decisions. Yet, Defendant has and continues to represent that the  
9 Products are "Maximum Strength" lidocaine products when they are not, and has  
10 omitted from the Products' labeling the fact that there are other prescription  
11 products available in the market that contain a higher percentage of lidocaine (i.e.  
12 5%).  
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17           50.   **WHEN:** Defendant made material misrepresentations and/or  
18 omissions detailed herein, including that the Products are "Maximum Strength"  
19 lidocaine products, continuously throughout the applicable Class period(s).  
20

21           51.   **WHERE:** Defendant's material misrepresentations and omissions,  
22 that the Products are "Maximum Strength" lidocaine products were located on the  
23 very center of the front label of the Products in bold lettering surrounded by a  
24 bubble that contrasts with the background of the packaging. Such a labeling  
25 configuration instantly catches the eye of all reasonable consumers, including  
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1 Plaintiffs, at the point of sale in every transaction. The Products are sold in  
2 Defendant's retail stores nationwide as well as online.

3       52. **HOW:** Defendant made written misrepresentations right on the front  
4 label of the Products that the Products were "Maximum Strength" lidocaine  
5 products even though stronger lidocaine products are available in the market. As  
6 such, Defendant's "Maximum Strength" representations are false and misleading.  
7 Moreover, Defendant omitted from the Products' labeling the fact that there are  
8 other prescription products available in the market that contain a higher percentage  
9 of lidocaine (i.e. 5%). And as discussed in detail throughout this Complaint,  
10 Plaintiffs and Class Members read and relied on Defendant's "Maximum Strength"  
11 representations and omissions before purchasing the Products.  
12

13       53. **WHY:** Defendant misrepresented its Products as being "Maximum  
14 Strength" lidocaine products and omitted from the Products' labeling the fact that  
15 there are other prescription products available in the market that contain a higher  
16 percentage of lidocaine (i.e. 5%) for the express purpose of inducing Plaintiffs and  
17 Class Members to purchase the Products at a substantial price premium. As such,  
18 Defendant profited by selling the misrepresented Products to at least thousands of  
19 consumers throughout the nation.  
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**CLASS ACTION ALLEGATIONS**

54. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Specifically, the Classes are defined as:

**National Class:** All persons in the United States who purchased the Products during the fullest period of law.

In the alternative, Plaintiff Bechtel brings this action on behalf of the following State Sub-Class:

**California Sub-Class:** All persons in the State of California who purchased the Products during the fullest period of law.

In the alternative, Plaintiffs Hankis and Schlenker bring this action on behalf of the following State Sub-Class:

**Illinois Sub-Class:** All persons in the State of Illinois who purchased the Products during the fullest period of law.

55. Excluded from the Classes are (a) any person who purchased the Products for resale and not for personal or household use, (b) any person who signed a release of any Defendant in exchange for consideration, (c) any officers, directors or employees, or immediate family members of the officers, directors or employees, of any Defendant or any entity in which a Defendant has a controlling interest, (d) any legal counsel or employee of legal counsel for any Defendant, and

1 (e) the presiding Judge in this lawsuit, as well as the Judge's staff and their  
2 immediate family members.

3 56. Plaintiffs reserve the right to amend the definition of the Classes if  
4 discovery or further investigation reveals that the Classes should be expanded or  
5 otherwise modified.  
6

7 57. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** Class  
8 Members are so numerous and geographically dispersed that joinder of all Class  
9 Members is impracticable. While the exact number of Class Members remains  
10 unknown at this time, upon information and belief, there are thousands, if not  
11 hundreds of thousands, of putative Class Members. Moreover, the number of  
12 members of the Classes may be ascertained from Defendant's books and records.  
13 Class Members may be notified of the pendency of this action by mail and/or  
14 electronic mail, which can be supplemented if deemed necessary or appropriate by  
15 the Court with published notice.  
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19 58. **Predominance of Common Questions of Law and Fact – Federal**  
20 **Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and  
21 fact exist as to all Class Members and predominate over any questions affecting  
22 only individual Class Members. These common legal and factual questions  
23 include, but are limited to, the following:  
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26 a. Whether the Products contain the defect alleged herein;  
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- b. Whether Defendant made the “MAXIMUM STRENGTH” Representations;
- c. Whether Defendant had actual or imputed knowledge of the defect but did not disclose it to Plaintiffs and the Classes;
- d. Whether Defendant promoted the Products with false and misleading statements of fact and material omissions;
- e. Whether Defendant’s “MAXIMUM STRENGTH” Representations are deceptive, unfair or misleading;
- f. Whether Defendant’s actions and/or omissions violate the consumer protection statutes invoked below;
- g. Whether Defendant’s conduct violates public policy;
- h. Whether Defendant’s acts, omissions or misrepresentations of material facts constitute fraud;
- i. Whether Defendant breached express warranties regarding the Products;
- j. Whether Plaintiffs and putative members of the Classes have suffered an ascertainable loss of money or property or other value as a result of Defendant’s acts, omissions or misrepresentations of material facts;
- k. Whether Defendant was unjustly enriched at the expense of Plaintiffs and members of the putative Classes in connection with the Products;

- 1           l. Whether Plaintiffs and members of the putative Classes are entitled to  
2           monetary damages and, if so, the nature of such relief; and  
3           m. Whether Plaintiffs and members of the putative Classes are entitled to  
4           equitable, declaratory or injunctive relief and, if so, the nature of such  
5           relief.  
6

7           59. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on  
8           grounds generally applicable to the putative Classes, thereby making final  
9           injunctive or corresponding declaratory relief appropriate with respect to the  
10          putative Classes as a whole. In particular, Defendant has, marketed, advertised,  
11          distributed and sold Products containing the Products' "MAXIMUM  
12          STRENGTH" Representations, which are false and misleading.  
13

14          60. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs'  
15          claims are typical of those of the absent Class Members in that Plaintiffs and the  
16          Class Members each purchased and used the Products and each sustained damages  
17          arising from Defendant's wrongful conduct, as alleged more fully herein. Plaintiffs  
18          shares the aforementioned facts and legal claims or questions with putative  
19          members of the Classes, and Plaintiffs and all members of the putative Classes  
20          have been similarly affected by Defendant's common course of conduct alleged  
21          herein. Plaintiffs and all members of the putative Classes sustained monetary and  
22          economic injuries including, but not limited to, ascertainable loss arising out of  
23          24          25          26          27          28

1 Defendant's false and deceptive "Maximum Strength" representations and  
2 omissions, as alleged herein.

3       **61. Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs  
4 will fairly and adequately represent and protect the interests of the members of  
5 the putative Classes. Plaintiffs have retained counsel with substantial experience  
6 in handling complex class action litigation, including complex questions that arise  
7 in this type of consumer protection litigation. Further, Plaintiffs and their counsel  
8 are committed to the vigorous prosecution of this action. Plaintiffs do not have any  
9 conflicts of interest or interests adverse to those of putative Classes.  
10

11  
12       **62. Insufficiency of Separate Actions – Federal Rule of Civil**  
13 **Procedure 23(b)(1).** Absent a class action, Plaintiffs and members of the Classes  
14 will continue to suffer the harm described herein, for which they would have no  
15 remedy. Even if separate actions could be brought by individual consumers, the  
16 resulting multiplicity of lawsuits would cause undue burden and expense for both  
17 the Court and the litigants, as well as create a risk of inconsistent rulings and  
18 adjudications that might be dispositive of the interests of similarly situated  
19 consumers, substantially impeding their ability to protect their interests, while  
20 establishing incompatible standards of conduct for Defendant. Accordingly, the  
21 proposed Classes satisfy the requirements of Fed. R. Civ. P. 23(b)(1).  
22  
23  
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1           **63. Declaratory and Injunctive Relief – Federal Rule of Civil**  
2 **Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally  
3 applicable to Plaintiffs and all Members of the Classes, thereby making appropriate  
4 final injunctive and declaratory relief, as described below, with respect to the  
5 members of the Classes as a whole.  
6

7           **64. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class  
8 action is superior to any other available methods for the fair and efficient  
9 adjudication of the present controversy for at least the following reasons:  
10

- 11           a. The damages suffered by each individual member of the putative  
12           Classes do not justify the burden and expense of individual  
13           prosecution of the complex and extensive litigation necessitated by  
14           Defendant's conduct;  
15  
16           b. Even if individual members of the Classes had the resources to pursue  
17           individual litigation, it would be unduly burdensome to the courts in  
18           which the individual litigation would proceed;  
19  
20           c. The claims presented in this case predominate over any questions of  
21           law or fact affecting individual members of the Classes;  
22  
23           d. Individual joinder of all members of the Classes is impracticable;  
24  
25  
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28



- 1 e. Absent a Class, Plaintiffs and members of the putative Classes will  
2 continue to suffer harm as a result of Defendant's unlawful conduct;  
3 and  
4
- 5 f. This action presents no difficulty that would impede its management  
6 by the Court as a class action, which is the best available means by  
7 which Plaintiffs and members of the putative Classes can seek redress  
8 for the harm caused by Defendant.  
9
- 10 g. In the alternative, the Classes may be certified for the following  
11 reasons:  
12
- 13 i. The prosecution of separate actions by individual members of the  
14 Classes would create a risk of inconsistent or varying  
15 adjudication with respect to individual members of the Classes,  
16 which would establish incompatible standards of conduct for  
17 Defendant;  
18
- 19 ii. Adjudications of claims of the individual members of the Classes  
20 against Defendant would, as a practical matter, be dispositive of  
21 the interests of other members of the putative Classes who are  
22 not parties to the adjudication and may substantially impair or  
23 impede the ability of other putative Class Members to protect  
24 their interests; and  
25  
26  
27  
28

1           iii. Defendant has acted or refused to act on grounds generally  
 2           applicable to the members of the putative Classes, thereby  
 3           making appropriate final and injunctive relief with respect to the  
 4           putative Classes as a whole.  
 5

## 6           **CLAIMS FOR RELIEF**

### 7           **COUNT I**

#### 8           **California’s False Advertising Law** 9           **Cal. Bus. & Prof. Code § 17500 (“FAL”)** 10          **(Plaintiff Bechtel On Behalf of the California Sub-Class)**

11          65. Plaintiff Bechtel repeats and realleges the allegations in the previous  
 12 paragraphs as if fully set forth herein.

13          66. The FAL provides that “[i]t is unlawful for any person, firm,  
 14 corporation or association, or any employee thereof with intent directly or indirectly  
 15 to dispose of real or personal property or to perform services” to disseminate any  
 16 statement “which is untrue or misleading, and which is known, or which by the  
 17 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus.  
 18 & Prof. Code § 17500.  
 19

20          67. It is also unlawful under the FAL to disseminate statements concerning  
 21 property or services that are “untrue or misleading, and which is known, or which  
 22 by the exercise of reasonable care should be known, to be untrue or misleading.” *Id.*  
 23

24          68. As alleged herein, Walmart committed acts of false and misleading  
 25 advertising, as defined by the FAL, by using statements to promote the sale of it’s  
 26  
 27  
 28

1 the Products and making “MAXIMUM STRENGTH” representations and  
2 omissions. Walmart knew or should have known that its advertising claims have not  
3 been substantiated and are misleading and/or false.  
4

5 69. Walmart knew or should have known, through the exercise of  
6 reasonable care, that its “MAXIMUM STRENGTH” representations and omissions  
7 were false and misleading and likely to deceive consumers and cause them to  
8 purchase Walmart’s Lidocaine products.  
9

10 70. Defendant’s wrongful conduct is ongoing and part of a general practice  
11 that is still being perpetuated and repeated throughout the State of California and  
12 nationwide.  
13

14 71. Plaintiff Bechtel suffered injury in fact as a result of Walmart’s actions  
15 as set forth herein because she purchased the Products in reliance on Walmart’s false  
16 and misleading “MAXIMUM STRENGTH” representations and omissions.  
17

18 72. Walmart’s business practices as alleged herein constitute deceptive,  
19 untrue, and misleading advertising pursuant to the FAL because Walmart has  
20 advertised the Products in a manner that is untrue and misleading, which Walmart  
21 knew or reasonably should have known, and omitted material information from its  
22 advertising.  
23  
24

25 73. Walmart profited from its sale of the falsely and deceptively advertised  
26 Products to unwary consumers.  
27  
28

74. As a result, Plaintiff Bechtel, the California Sub-Class members, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

75. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff Bechtel, on behalf of herself and the California Sub-Class, seeks an order enjoining Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

**COUNT II**  
**California’s Consumer Legal Remedies Act**  
**Cal. Civ. Code § 1750 et seq. (“CLRA”)**  
**(Plaintiff Bechtel On Behalf of the California Sub-Class)**

76. Plaintiff Bechtel repeats and realleges the allegations in the previous paragraphs as if fully set forth herein.

77. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

78. Walmart's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Products for personal, family, or household purposes by Plaintiff Bechtel and Class Members, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

1           b. § 1770(a)(7): representing that goods are of a particular standard,  
2           quality, or grade if they are of another;

3           c. § 1770(a)(9): advertising goods with intent not to sell them as  
4           advertised; and  
5

6           d. § 1770(a)(16): representing the subject of a transaction has been  
7           supplied in accordance with a previous representation when it has not.  
8

9           79. Defendant profited from the sale of the falsely, deceptively, and  
10          unlawfully advertised Products to unwary consumers.

11          80. Defendant's wrongful business practices constituted, and constitute, a  
12          continuing course of conduct in violation of the CLRA.  
13

14          81. In compliance with the provisions of California Civil Code § 1792,  
15          Plaintiff Bechtel sent written notice to Defendant on February 1, 2022, informing  
16          Defendant of her intention to seek damages under California Civil Code § 1750, et  
17          seq. The letter expressly stated that it was sent on behalf of Plaintiff Bechtel and  
18          "all other persons similarly situated." Defendant has failed to adequately address the  
19          allegations contained in Plaintiff Bechtel's letter.  
20  
21

22          82. Accordingly, Plaintiff Bechtel seeks monetary damages, attorney's  
23          fees, and any other relief award by the Court from Defendant for its violations of the  
24          CLRA.  
25  
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**COUNT III**

**Violations of the Illinois Consumer Fraud and  
Deceptive Business Practices Act**

**815 Ill. Comp. Stat. §§ 505, *et seq.***

**(Plaintiffs Hankis and Schlenker On behalf of the Illinois Subclass)**

83. Plaintiff Hankis and Plaintiff Schlenker (hereby the “Illinois Plaintiffs”) incorporate by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

84. Illinois Plaintiffs bring this claim individually and on behalf of the Illinois Subclass.

85. The Illinois Consumer Fraud and Deceptive Business Practices Act (the “ICFA”), 815 ILCS 505/1, *et seq.*, prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purpose.

86. Illinois Plaintiffs and other members of the Illinois Subclass, as purchasers of the Products, are consumers within the meaning of the ICFA given that Defendant’s business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

87. Defendant knowingly concealed, suppressed, and consciously omitted material facts to Illinois Plaintiffs and other members of the Illinois Subclass knowing that consumers would rely on the advertisements and packaging to purchase the Products.

1           88. Illinois Plaintiffs and the other Illinois Subclass members reasonably  
2 relied upon Defendant's omissions.

3           89. Defendant's conduct, as described herein, took place within the State  
4 of Illinois and constitutes unfair or deceptive acts or practices in the course of trade  
5 and commerce, in violation of 815 ICFA 505/1, et seq.

6           90. Defendant violated the ICFA by, inter alia, representing that the  
7 Products have characteristics or benefits that they do not have. 815 ILCS § 505/2;  
8 815 ILCS § 510/2(7).  
9

10           91. Defendant advertised the Products with intent not to sell it as  
11 advertised, in violation of 815 ILCS § 505/2 and 815 ILCS § 510/2(9).  
12

13           92. Defendant engaged in fraudulent and/or deceptive conduct which  
14 creates a likelihood of confusion or of misunderstanding in violation of 815 ILCS §  
15 505/2; 815 ILCS § 510/2(3).  
16

17           93. Defendant engaged in misleading and deceptive advertising that  
18 represented that the Products were safe. Defendant chose to label the Products in this  
19 way to impact consumer choices and gain market dominance, as it is aware that all  
20 consumers who purchased the Products would be impacted by its omissions and  
21 would reasonably believe Walmart's false and misleading "MAXIMUM  
22 STRENGTH" representations and omissions.  
23  
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1           94. Defendant intended that Illinois Plaintiffs and each of the other Illinois  
2 Subclass members would reasonably rely upon the material omissions concerning  
3 the true nature of the Products.

4           95. Defendant's concealment, omissions and other deceptive conduct were  
5 likely to deceive and cause misunderstanding and/or in fact caused Illinois Plaintiffs  
6 and each of the other Illinois Subclass members to be deceived about the true nature  
7 of the Products.  
8

9           96. As a direct and proximate result of Defendant's violations of the ICFA,  
10 as set forth above, Illinois Plaintiff and the Illinois Subclass members have suffered  
11 ascertainable loss of money caused by Defendant's omissions.  
12

13           97. Had they been aware of the true nature of the Products, Illinois  
14 Plaintiffs and Illinois Subclass members either would have paid less for the Products  
15 or would not have purchased them at all.  
16

17           98. Illinois Plaintiffs and the Illinois Subclass members are therefore  
18 entitled to relief, including restitution, actual damages, treble damages, punitive  
19 damages, costs and attorney's fees, under sections 815 ILCS 505/10a of the ICFA.  
20 Illinois Plaintiffs and the Illinois Subclass members are also entitled to injunctive  
21 relief, seeking an order enjoining Defendant's unfair and/or deceptive acts or  
22 practices.  
23  
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**COUNT IV**

**Violations of the Illinois Uniform Deceptive Trade Practices Act  
ILCS §§ 510/2, *et seq.*  
(Plaintiffs Hankis and Schlenker On behalf of the Illinois Subclass)**

99. Plaintiff Hankis and Plaintiff Schlenker (hereby the “Illinois Plaintiffs”) incorporate by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

100. Illinois Plaintiffs bring this claim individually and on behalf of the Illinois Subclass for violations of the Illinois Uniform Deceptive Trade Practices Act, ILCS §§ 510/2, *et seq.*

101. Defendant constitutes a “person” as defined by 815 ILCS §§ 510/1(5).

102. Defendant engaged in deceptive trade practices in the conduct of their business, in violation of 815 ILCS §§ 510/2(a), including:

103. Defendant represented to Illinois Plaintiffs and the Illinois Subclass that the Products had approval or characteristics that they did not have;

104. Defendant represented to Illinois Plaintiffs and the Illinois Subclass that the Products were of a particular standard, quality, or grade when they were actually of another;

105. Defendant advertised to Illinois Plaintiffs and the Illinois Subclass goods with intent not to sell them as advertised;

106. Defendant engaged in other fraudulent or deceptive conduct creating a likelihood of confusion or misunderstanding; and

1           107. Defendant represented that consumers' purchases of the Products  
2 conferred or involved rights that the transactions did not have or involve.

3           108. The facts that Defendant misrepresented, concealed, suppressed or  
4 omitted the "MAXIMUM STRENGTH" representations and omissions as alleged  
5 above were material, in that such facts are the type of information upon which a  
6 reasonable consumer is expected to rely in making a decision of whether to purchase  
7 Defendant's products.  
8

9           109. Defendant's misrepresentation, concealment, suppression and omission  
10 of material facts as alleged above creates a likelihood of deception and was likely to  
11 deceive a consumer acting reasonably in the same circumstances.  
12

13           110. Defendant's representations and omissions were material because they  
14 were likely to deceive reasonable consumers.  
15

16           111. The above unfair and deceptive practices and acts by Defendant were  
17 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial  
18 injury to Illinois Plaintiffs and Illinois Subclass members that they could not  
19 reasonably avoid; this substantial injury outweighed any benefits to consumers or to  
20 competition.  
21

22           112. As a direct and proximate result of Defendant's deceptive acts and  
23 practices, Illinois Plaintiffs and Illinois Subclass members have suffered and will  
24 continue to suffer injury, ascertainable losses of money or property, and monetary  
25  
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28

1 and non-monetary damages, including from not receiving the benefit of their bargain  
2 in purchasing Defendant's Products.

3 113. Illinois Plaintiffs and Illinois Subclass members seek all monetary and  
4 non-monetary relief allowed by law, including injunctive relief and reasonable  
5 attorney's fees  
6

7  
8 **COUNT V**  
9 **Fraud**  
**(Plaintiffs On Behalf of the Nationwide Class)**

10 114. Plaintiffs repeat and reallege the allegations in the previous paragraphs  
11 as if fully set forth herein.  
12

13 115. Plaintiffs bring this cause of action on behalf of themselves and the  
14 Nationwide Class against Defendant, Walmart.

15 116. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n  
16 alleging fraud or mistake, a party must state with particularity the circumstances  
17 constituting fraud or mistake." To the extent necessary, as detailed in the  
18 paragraphs above and below, Plaintiffs have satisfied the requirements of Rule 9(b)  
19 by establishing the following elements with sufficient particularity.  
20  
21

- 22  
23 a. **WHO:** Defendant, Walmart Inc., made material misrepresentations  
24 and/or omissions of fact in its labeling and marketing of the Products  
25 by representing that the Products are "MAXIMUM STRENGTH"  
26 lidocaine products.  
27

1           b. **WHAT:** Defendant's conduct here was and continues to be fraudulent  
2           because it has the effect of deceiving consumers into believing that  
3           the Products are "MAXIMUM STRENGTH" lidocaine products.  
4           Defendant omitted from Plaintiff and Class Members that the  
5           Products are not "MAXIMUM STRENGTH" lidocaine products  
6           because other lidocaine products exist in the market that contain a  
7           higher amount (i.e. 5%) of lidocaine. Defendant knew or should have  
8           known this information is material to all reasonable consumers and  
9           impacts consumers' purchasing decisions. Yet, Defendant has and  
10          continues to represent that the Products are "MAXIMUM  
11          STRENGTH" lidocaine products when they are not, and has omitted  
12          from the Products' labeling the fact that there are other prescription  
13          products available in the market that contain a higher percentage of  
14          lidocaine (i.e. 5%).

15  
16          c. **WHEN:** Defendant made material misrepresentations and/or  
17          omissions detailed herein, including that the Products are  
18          "MAXIMUM STRENGTH" lidocaine products, continuously  
19          throughout the applicable Class period(s).

20  
21          d. **WHERE:** Defendant's material misrepresentations and omissions,  
22          that the Products are "MAXIMUM STRENGTH" lidocaine products,  
23  
24  
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1 were located on the very center of the front label of the Products in  
2 bold lettering surrounded by a bubble that contrasts with the  
3 background of the packaging, which instantly catches the eye of all  
4 reasonable consumers, including Plaintiffs, at the point of sale in  
5 every transaction. The Products are sold in Defendant's brick and  
6 mortar stores and online store nationwide.  
7

8  
9 e. **HOW:** Defendant made written misrepresentations right on the front  
10 label of the Products that the Products were "MAXIMUM  
11 STRENGTH" lidocaine products even though other stronger  
12 lidocaine products are available in the market. As such, Defendant's  
13 "MAXIMUM STRENGTH" representations are false and  
14 misleading. Moreover, Defendant omitted from the Products' labeling  
15 the fact that there are other prescription products available in the  
16 market that contain a higher percentage of lidocaine (i.e. 5%). And as  
17 discussed in detail throughout this Complaint, Plaintiffs and Class  
18 Members read and relied on Defendant's "MAXIMUM  
19 STRENGTH" representations and omissions before purchasing the  
20 Products.  
21  
22  
23  
24

25 f. **WHY:** Defendant misrepresented its Products as being "MAXIMUM  
26 STRENGTH" lidocaine products and omitted from the Products'  
27  
28

1 labeling the fact that there are other prescription products available in  
2 the market that contain a higher percentage of lidocaine (i.e. 5%) for  
3 the express purpose of inducing Plaintiffs and Class Members to  
4 purchase the Products at a substantial price premium. As such,  
5 Defendant profited by selling the misrepresented Products to at least  
6 thousands of consumers throughout the nation.  
7

8  
9 117. As alleged herein, Walmart knowingly made material  
10 misrepresentations and omissions regarding the Products on the Products' labeling  
11 and packaging in the Products' advertisements, and/or on its website, specifically  
12 the "MAXIMUM STRENGTH" representations and omissions alleged more fully  
13 herein.  
14

15 118. Defendant, Walmart, made these material "MAXIMUM STRENGTH"  
16 representations and omissions in order to induce Plaintiff and putative Class  
17 Members to purchase the Products.  
18

19 119. Defendant, Walmart, knew the "MAXIMUM STRENGTH"  
20 representations and omissions regarding the Products were false and misleading but  
21 nevertheless made such representations through the marketing, advertising and on  
22 the Products' labeling. In reliance on these "MAXIMUM STRENGTH"  
23 representations and omissions, Plaintiffs and putative Class Members were induced  
24 to, and did, pay monies to purchase the Products.  
25  
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1           125. Defendant, as the marketer, distributor and/or seller, expressly  
2 warranted that the Products were “MAXIMUM STRENGTH” lidocaine products.

3           126. Plaintiffs formed a contract with Defendant at the time they purchased  
4 the Products. The terms of that contract include the promises and affirmations of fact  
5 that Defendant makes through an extensive, uniform, nationwide marketing  
6 campaign, and on its product labels. Among other affirmations of fact and promises  
7 described herein, Defendant represents that the Products are “MAXIMUM  
8 STRENGTH” lidocaine products.  
9

10  
11           127. Defendant’s express warranties, and its affirmations of fact and  
12 promises made to Plaintiffs and Class Members regarding the Products became the  
13 basis of the bargain between Defendant and Plaintiffs and the Classes, thereby  
14 creating an express warranty that the Products would conform to those affirmations  
15 of fact, representations, promises, and descriptions.  
16  
17

18           128. Contrary to Defendant’s affirmations of fact and promises, the Products  
19 are not a “MAXIMUM STRENGTH” lidocaine product. Defendant breached the  
20 express warranties and/or contract obligations by placing the Products into the  
21 stream of commerce and selling the Products to consumers, when the Products are  
22 not “MAXIMUM STRENGTH” lidocaine products, because other comparable  
23 lidocaine products exist in the market that contain more lidocaine than Defendant’s  
24 product.  
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1           129. As such, Defendant's Products do not conform to the express warranties  
2 because the representations are false or misleading.

3           130. At all times relevant herein, Defendant was aware, or should have been  
4 aware, of the misrepresentations regarding the Products.  
5

6           131. Defendant made the "MAXIMUM STRENGTH" representation with  
7 the intention that Plaintiffs and Class members would rely on the "Maximum  
8 Strength" representation. Plaintiffs and Class members did, in fact, rely on  
9 Defendant's "MAXIMUM STRENGTH" representation when deciding to purchase  
10 the Products.  
11

12           132. Where required, Defendant's affirmations of fact and promises were  
13 material to Plaintiffs and Class Members decisions to purchase the Products.  
14

15           133. All conditions precedent to Defendant's liability for its breach of  
16 express warranty have been performed by Plaintiffs or Class Members.  
17

18           134. On February 1, 2022, Plaintiff Bechtel, through counsel, provided  
19 notice to Defendant, apprising Defendant of its breach of warranties. On June 3,  
20 2022, Plaintiffs Hankis and Schlenker, though counsel, provided electronic notice to  
21 Defendant apprising Defendant of its breach of warranties. Defendant has failed to  
22 adequately remedy the issues contained in Plaintiffs' letters.  
23  
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1 not otherwise perform as represented and for the particular purpose for which they  
2 were intended, Defendant was unjustly enriched at the expense of Plaintiffs and  
3 putative Class Members.

4  
5 141. Plaintiffs' detriment and Defendant's enrichment were related to and  
6 flowed from the wrongful conduct challenged in this Complaint.

7  
8 142. Defendant has profited from its unlawful, unfair, misleading, and  
9 deceptive practices at the expense of Plaintiffs and putative Class Members under  
10 circumstances in which it would be unjust for Defendant to be permitted to retain  
11 the benefit. It would be inequitable for Defendant to retain the profits, benefits, and  
12 other compensation obtained from their wrongful conduct as described herein in  
13 connection with selling the Products.

14  
15 143. Defendant has been unjustly enriched in retaining the revenues derived  
16 from Class Members' purchases of the Products, which retention of such revenues  
17 under these circumstances is unjust and inequitable because Defendant marketed,  
18 advertised, distributed, and sold the Products, and Walmart misrepresented the  
19 nature of the Products, misrepresented their benefits and attributes, and knowingly  
20 marketed and promoted the Products with "MAXIMUM STRENGTH"  
21 representations and omissions, which caused injuries to Plaintiffs and the Class  
22 because they would not have purchased the Products based on the same  
23 representations if the true facts concerning the Products had been known.  
24  
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1           144. Plaintiffs and putative Class Members have been damaged as a direct  
2 and proximate result of Defendant's unjust enrichment because they would not have  
3 purchased the Products on the same terms or for the same price had they known the  
4 true nature of the Products and the mis-statements regarding what the Products were  
5 and what they contained.  
6

7           145. Defendant either knew or should have known that payments rendered  
8 by Plaintiffs and putative Class Members were given and received with the  
9 expectation that the "MAXIMUM STRENGTH" representations and omissions  
10 made by Defendant in advertising, on Defendant's websites, and on the Products'  
11 labels and packaging were true. It is inequitable for Defendant to retain the benefit  
12 of payments under these circumstances because the "MAXIMUM STRENGTH"  
13 representations and omissions are not true.  
14  
15

16           146. Plaintiffs and putative Class Members are entitled to recover from  
17 Defendant all amounts wrongfully collected and improperly retained by Defendant.  
18

19           147. When required, Plaintiffs and Class Members are in privity with  
20 Defendant because Defendant's sale of the Products was direct.  
21

22           148. As a direct result of Defendant's wrongful conduct and unjust  
23 enrichment, Plaintiffs and putative Class Members are entitled to restitution of,  
24 disgorgement of, and/or imposition of a constructive trust upon all profits, benefits,  
25  
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28

1 and other compensation obtained by Defendant for their inequitable and unlawful  
2 conduct.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
6 situated members of the Classes, pray for relief and judgment, including entry of  
7 an order:  
8

- 9 A. Declaring that this action is properly maintained as a class action, certifying  
10 the proposed Class(es), appointing Plaintiffs as Class Representatives and  
11 appointing Plaintiffs' counsel as Class Counsel;
- 12 B. Directing that Defendant bear the costs of any notice sent to the Class(es);
- 13 C. Declaring that Defendant must disgorge, for the benefit of the Class(es), all  
14 or part of the ill-gotten profits they received from the sale of the Products, or  
15 order Defendant to make full restitution to Plaintiffs and the members of the  
16 Class(es);
- 17 D. Awarding restitution and other appropriate equitable relief;
- 18 E. Granting an injunction against Defendant to enjoin it from conducting its  
19 business through the unlawful, unfair and fraudulent acts or practices set  
20 forth herein;
- 21 F. Granting an Order requiring Defendant to fully and appropriately recall the  
22 Products and/or to remove the claims on its website and elsewhere, including  
23 "Maximum Strength" representations regarding the Products;
- 24 G. Ordering a jury trial and damages according to proof;
- 25 H. Awarding Plaintiffs and members of the Class(es) statutory damages, as  
26 provided by the applicable state consumer protection statutes invoked above;
- 27  
28

- 1 I. Enjoining Defendant from continuing to engage in the unlawful and unfair  
2 business acts and practices as alleged herein;
- 3 J. Awarding attorneys' fees and litigation costs to Plaintiffs and members of  
4 the Class(es);
- 5 K. Awarding civil penalties, prejudgment interest and punitive damages as  
6 permitted by law; and
- 7 L. Ordering such other and further relief as the Court deems just and proper.

8  
9 **JURY DEMAND**

10 Plaintiffs demands a trial by jury of all claims in this Complaint so triable.

11  
12 Dated: June 10, 2022

Respectfully submitted,

13 /s/ Jonathan Shub

14 Jonathan Shub (SBN 237708)

15 Kevin Laukaitis (*pro hac vice*)

16 **SHUB LAW FIRM LLC**

17 134 Kings Highway E, 2nd Floor

18 Haddonfield, NJ 08033

19 T: 856-772-7200

F: 856-210-9088

jshub@shublawyers.com

[klaukaitis@shublawyers.com](mailto:klaukaitis@shublawyers.com)

20 Nick Suciu (*pro hac vice*)

21 **MILBERG COLEMAN BRYSON**

22 **PHILLIPS GROSSMAN PLLC**

23 6905 Telegraph Rd., Suite 115

24 Bloomfield Hills, MI 48301

25 Tel: (313) 303-3472

Email: nsuciu@milberg.com

26 Charles E. Schaffer (*pro hac vice*)

27 David C. Magagna (*pro hac vice*)

**LEVIN, SEDRAN & BERMAN, LLP**

510 Walnut Street, Suite 500

Philadelphia, PA 19106

Phone: (215) 592-1500

Fax: (215) 592-4663

[cschaffer@lfsblaw.com](mailto:cschaffer@lfsblaw.com)

[dmagagna@lfsblaw.com](mailto:dmagagna@lfsblaw.com)

*Attorneys for Plaintiffs and Putative Class  
Members*

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Jonathan Shub, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an attorney at Shub Law Firm LLC, counsel of record for Plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration and, if call as a witness, I could and would competently testify thereto under oath.

2. The First Amended Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the First Amended Complaint occurred in the Northern District of California.

I declare under the penalty of perjury under the laws of the State of California, New Jersey, and the United States that the foregoing is true and correct and that this declaration was executed at Haddonfield, New Jersey this 10th day of June, 2022.

/s/ Jonathan Shub  
Jonathan Shub